

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LADELL EUGENE WALTON, JR.,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of the Social Security
Administration,

Defendant.

8:12-CV-159

MEMORANDUM AND ORDER ON
MOTION FOR ATTORNEY FEES

This matter is before the Court upon Plaintiff's motion for attorney fees pursuant to the Equal Access to Justice Act, [28 U.S.C. § 2412](#) (filing [21](#)). The defendant has no objection to the awarding of fees and expenses in the amount of \$5,777.60, which represents 31.4 hours of work at \$184 per hour.¹

The Court has determined that plaintiff was the prevailing party in this action, as it was remanded to the Commissioner for further action; that the application for fees was filed in a timely fashion;² and that the position of the Commissioner was not substantially justified because the administrative law judge did not include limitations in the plaintiff's residual functional capacity to account for all the plaintiff's severe impairments. See [Koss v. Sullivan](#), 982 F.2d 1226 (8th Cir. 1993). Therefore, the plaintiff is entitled to an award of attorney fees.

IT IS ORDERED:

1. Plaintiff's Motion for Attorney Fees Pursuant to [28 U.S.C. § 2412\(d\)\(1\)\(B\)](#) (filing [21](#)) is granted.

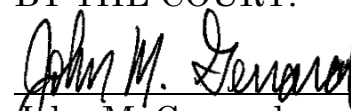
¹ The maximum hourly fee of \$125 specified in [28 U.S.C. § 2412\(d\)\(1\)\(D\)\(2\)\(A\)](#) was adjusted to account for inflation. See filings [21](#) and [22-2](#).

² An Equal Access to Justice Act application based on a district court judgment remanding a case pursuant to sentence four of [42 U.S.C. § 405\(g\)](#) must be filed no later than 30 days after the sentence four judgment has been entered and the appeal period has run such that the judgment is no longer appealable. See [Pottsmith v. Barnhart](#), 306 F.3d 526, 527-28 (8th Cir. 2002); see also, [Shalala v. Schaefer](#), 509 U.S. 292, 302 (1993); [Melkonyan v. Sullivan](#), 501 U.S. 89, 94-97 (1991).

2. By separate document, the Court shall enter judgment for plaintiff and against defendant providing that plaintiff is awarded attorney fees of \$5,777.60.

Dated this 18th day of October, 2012.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John M. Gerrard", is written over a horizontal line.

John M. Gerrard
United States District Judge